Local 388, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO *and* Barton Malow Co. Case 7-CC-1171

June 11, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 8, 1982, Administrative Law Judge James T. Youngblood issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief. The General Counsel filed a cross-exception and answering brief to the Respondent's Exception 23.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified below.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Local 388, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Howell, Michigan, its officers, agents, and representatives, shall take the action set forth in the said recommended Order as so modified:

Insert the following as paragraph 2(b) and reletter the subsequent paragraph accordingly:

"(b) Sign and deliver sufficient copies of said notice to the Regional Director for Region 7 for posting by Barton Malow Company, Long Plumbing Co., Sinacola Construction Company, Bosch Mechanical, and other employers engaged in performing services at the Howell High School construction sites, these employers being willing, at all locations where notices to employees are customarily posted."

DECISION

STATEMENT OF THE CASE

JAMES T. YOUNGBLOOD, Administrative Law Judge: The complaint which issued on July 20, 1981, alleges that since July 6, 1981, Local 388, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (herein Respondent) has engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act. Respondent filed an answer denying the commission and of any unfair labor practices. Following the hearing the General Counsel and Respondent filed briefs which have been duly considered.

Upon the entire record, and from my observations of the demeanor of each witness while testifying, and the briefs filed herein, I make the following:

FINDINGS AND CONCLUSIONS[1]

I. FACTS OF COMMERCE

Long Plumbing Co. (Long) a Michigan corporation with its principal office and place of business at 190 East Main Street, Northville, Michigan, is engaged in the business of performing as a mechanical contractor in the construction business in the metropolitan Detroit, Michigan, area. In the course and conduct of its mechanical contracting business, Long purchases and has transported to its jobsites within the State of Michigan goods and materials which were transported and delivered to said Michigan jobsites from points outside the State of Michigan. Respondent admits and I find that Long is an employer engaged in commerce within the meaning of Section 2(6) and (7) and Section 8(b)(4) (B) of the Act.

For some time prior to this proceeding, construction had been in progress on a new high school for the

[1] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

The Respondent has also excepted, *inter alia*, to the Administrative Law Judge's finding that the locations of the picketing necessitated that all employees of the secondary employers cross or pass by one picket line or the other on their way to work at the new high school construction site. We find merit to this exception. The Administrative Law Judge credited testimony that, on the same day the picketing started, the Charging Party opened two additional entrances to the new high school construction site. These two entrances remained open throughout the picketing and their use did not necessitate passing either picketing location. However, this factual misstatement does not adversely affect the conclusion that the Respondent's picketing was unlawful.

[2] We find merit to the General Counsel's cross-exception to the Administrative Law Judge's omission from the Order of the standard provision requiring the Respondent to provide signed copies of the notice for posting by the employers named in the Decision should they so desire. We shall amend the Order to include this provision.

[1] The facts found herein are a compilation of the credited testimony, the exhibits, and stipulations of fact, viewed in light of logical consistency and inherent probability. Although these findings may not contain or refer to all of the evidence, all has been weighed and considered. To the extent that any testimony or other evidence not mentioned in this Decision may appear to contradict my findings of fact, I have not disregarded that evidence but have rejected it as incredible, lacking in probative weight, surplusage, or irrelevant. Credibility resolutions have been made on the basis of the whole record, including the inherent probabilities of the testimony and the demeanor of the witnesses. Where it may be required I will set forth specific credibility findings.

Howell public school system in Howell, Michigan. Additionally, some renovation work was being done on the old Howell High School which was adjacent to the new high school being constructed. It appears that there were about 92 separate prime contractors and their subcontractors working under contracts from the Howell public school system on the new high school construction and old high school renovation work; on construction sites which encompass approximately 146 acres of ground. Barton Malow Co. (herein Barton), the Charging Party, was the project manager for the Howell public schools. In the course of carrying out this project, Howell public schools let out contracts to various prime contractors exceeding $22 million.

In April 1981,[2] Long was awarded a mechanical contract for the renovation work on the old Howell High School by the Howell Public School Systems. This contract was for $30,110. In addition, Long had a subcontract from Sinacola Construction Company in the amount of $7,280, in connection with the construction of the new high school on a building used for watering the athletic field.

The tract of land on which the Howell High Schools are located, and which apparently houses other schools in the Howell School System, as indicated, encompasses approximately 146 acres. The tract is bounded by Grand River Avenue on the South; by Highlander Way on the West; by what is described as M-59 on the North, and the East boundary appears to be bounded in part by alternative A-1. The old Howell High School is located in the southwest corner, and this is the location of the renovation work to be performed by Long and will be referred to as the renovation site. This site is at the intersection of Highlander Way and Grand River Avenue, and is totally bounded by these two roadways. The remainder of the plot on the west; all of the northern boundary; all of the eastern boundary, and the remainder of the southern boundary are devoted to the construction of the new Howell High School. The renovation site, as I have indicated, takes up only a small portion of the total project in the southwestern corner.

Long is a plumbing and piping mechanical contractor and employs plumbers, apprentice plumbers, pipefitters, apprentice pipefitters, and pipe welders, craftsmen of the type that are represented by the Union involved in this proceeding. Long is a nonunion contractor, and apparently aware of potential union problems any time it begins work on a project where union craftsmen are employed.

Around June 16, Long sent an employee to the old high school renovation location, and at the time it began work on the old Howell High School renovation job Long set up what it described as a "reserved gate sign"[3] at one of the entrances to the renovation site. This entrance is located on Grand River Avenue about 200 yards east of the intersection of Highlander Way and Grand River Avenue. Long was requested to use this entrance by the owner, the Howell Public School System.

The sign was actually located some distance from Grand River Avenue but at a point where it could be viewed by anyone traveling on Grand River Avenue. It was also located at a point where if pickets were placed near the sign it would not obstruct, or interfere with, traffic on Grand River Avenue. According to the testimony, this entrance is known as the east entrance to the old Howell High School. This entrance from Grand River Avenue goes north toward the High School, turns left and passes in front of the old High School, and continues in a westerly direction and exits on to Highlander Way.

On July 7, the Union placed pickets at the intersection of Grand River Avenue and Highlander Way, approximately 200 yards to the West of the reserved entrance for Long.

At the same time the Union placed pickets at the intersection of M-59 and Highlander Way, which is approximately three-fourths of a mile to the north of the intersection of Grand River Avenue and Highlander Way. The signs at both locations named Long as the Employer with whom the Union had its dispute.[4] After observing the picket lines, on July 7, Long sent the following telegram to the Union:

> THIS IS TO ADVISE YOU THAT ON JULY 8, 1981, LONG PLUMBING COMPANY WILL ESTABLISH A RESERVED GATE AT THE OLD HOWELL HIGH SCHOOL LOCATED AT 1400 WEST GRAND RIVER HOWELL MICHIGAN. THIS RESERVED GATE WILL BE LOCATED AT THE EAST ENTRANCE TO THE SCHOOL OFF GRAND RIVER. EFFECTIVE JULY 8, 1981, LONG PLUMBING COMPANY ITS EMPLOYEES SUPPLIERS AND VISITORS WILL BE USING THE RESERVED GATE ONLY. IN ACCORDANCE WITH NLRB REGULATIONS ALL UNION ACTIVITIES ARE TO BE CONFINED TO THE RESERVED ENTRANCE.

Sometime after the picketing started Long sent an employee to the new Howell High School (herein called the New School Project), to do some piping work and he was asked to leave because of the picketing. He called Long and was instructed to go to the old renovation site and go to work. On July 9 Long sent the following telegram to the Union:

> PLEASE BE ADVISED THAT AS OF JULY 8, 1981, LONG PLUMBING CO WILL NO LONGER WORK BETWEEN THE HOURS OF 7 A M AND 5 P M MONDAY THROUGH FRIDAY AT THE NEW HOWELL HIGH SCHOOL IN HOWELL MI. THAT IS CURRENTLY UNDER CONSTRUCTION WITH BARTON MALOW THE CONSTRUCTION MANAGERS. PER NLRB REGULATIONS ALL UNION ACTIVITIES ARE TO CEASE AGAINST LONG PLUMBING COMPANY IF THEY HAVE NO PRESENCE ON THE JOB SITE. IF UNION ACTIVITY PERSISTS APPROPRIATE CHARGES WILL BE FILED WITH THE NLRB.

It appears that Long complied with the telegram and did no work at the New Howell High School site at anytime between the hours of 7 a.m. and 5 p.m. Monday

[2] Unless otherwise indicated all dates refer to 1981.

[3] A picture of this sign was introduced as G.C. Exh. 12. This sign indicated the entrance was reserved for the employees of Long and its suppliers, and that all others use other entrances.

[4] See G.C. Exh. 11.

through Friday. They did work some evenings and on Saturdays.

The construction location where Long is performing his subcontract work on the new High School project lies on the eastern side of the site a short distance south of the intersection of alternative A-1 and M-59. This primary site is nowhere near the location of the pickets that were placed on the construction site.

The picket location at the intersection of Highlander Way and M-59 was about 1,000 feet north of the main entrance to the construction site of the new school project. This entrance had been the main entrance to this project for about 2-1/2 years. The picket location at the intersection of Highlander Way and Grand River Avenue was about 1,500 feet south of this main entrance to the new school project. These two picket locations clearly were selected to attract all traffic going to or from the construction sites of the old renovation job and the new High School project by anyone traveling on M-59, Highlander Way and Grand River Avenue.

At this time all other entrances to this tract of land were closed. After the picketing began other entrances were opened for the use of secondary employers and their employees. These newly opened entrances were not picketed.

It appears that Long did no work on the new high school project until after November. The picketing at the intersection of Highlander Avenue and M-59 lasted for about one and a half weeks intersection lasted for about one and a half weeks and the other picketing at the intersection of Grand River and Highlander Way lasted until July 28.[5] When the Union began picketing it used a printed sign which read as follows:

WAGES—HOURS
AND
WORKING CONDITIONS
OF
( )
ARE SUB-STANDARD
TO THE WAGES, HOURS
& WORKING CONDITIONS
NEGOTIATED BY THE
PLUMBERS & FITTERS
L.U. 388
IN THE AREA

This sign was used at both picketed locations and in the beginning Long's name was written on the signs with a grease pencil. Shortly thereafter, Long's name faded so that no contractor's name was apparent on the picket sign. In any event, one picket location was more than a mile away from the location where the primary employees were working, and at the Highlander Way and Grand River Avenue picket location the picket was at least 200 yards away from the entrance to the old renovation site where the primary employees were working. It is clear that anyone entering the entrance to the new construction site on Highlander Way, which was between the picket locations on Highlander Way, would have to cross the picket locations. The Union had been working on this project for contractors who used their union members for some time, and was aware that all of the neutral contractors working on the job used this entrance as well as their employees. In fact, at the time of the picketing the Union was not even aware that Long had a contract for any work on the new High School construction site. It is apparent to me that the Union chose to place its pickets at the intersections of the three leading highways going into the construction sites to appeal to all employees, including all secondary employees working on this project.

[5] This picketing was enjoined by a Federal district court.

Discussion and Conclusions

There is little doubt that this construction location was a common site, that is, it was a site used by secondary or neutral employers having no labor dispute with the Union, as well as Long Plumbing Company, the primary employer, with whom the Union did have a labor dispute. It does appear, however, that the Union was unaware of the fact that Long had a contract at the new High School construction site. In any case, on these construction sites Long was working at two locations, the primary location was the old High School renovation site, and the other project was in a small building adjacent to the football field being constructed for the purposes of watering the athletic field at the new High School construction site. From a review of the facts in this matter it appears that the Union placed its pickets at the corner of M-9 and Highlander Way and at the corner of Grand River Avenue and Highlander Way at Points where the pickets would be the most effective in appealing to all employees working on the construction sites. It is also clear that the Union made no attempt to limit its dispute to the primary employer. The Union was aware that Long was working in the old High School renovation site; however, it chose not to picket the gate which had been set up and reserved for Long, but picketed approximately 200 yards away from that location, and at another location more than a mile away at the intersection of Highlander Way and M-59.

Section 8(b)(4)(i) and (ii)(B) of the Act protects so-called secondary or neutral employers from labor disputes not their own, but in which they became involved because they are working nearby or closely related to an employer with whom the Union has a dispute. In situations where the situs of the primary dispute comes to rest on the premises of a secondary or neutral employer, or comes to rest on a site where secondary or neutral employers are also working the Union conducting picketing or other activity must make certain that its actions bear solely upon the primary employer. In *Moore Dry Dock Company*, 92 NLRB 547 (1950), the Board laid down certain evidentiary standards for evaluating the objective of picketing at a common situs. In effect, the picketing must be limited to times when the situs of the dispute is located on the secondary employer's premises; the primary employer must be engaged in its normal business at that site; the picketing must be limited to places reasonably close to the location of the primary situs, and the picketing must clearly disclose that the dispute is with the primary employer.

In cases following the *Moore Dry Dock* decision it became apparent that one way to isolate the primary dispute was by setting up so-called reserved gates. That is, a gate or entrance would be reserved for either the secondary employees so that the union could not picket that gate, or a gate would be reserved restricting the primary employees to that gate, thus the union could picket that gate and that gate only. The sole purpose of reserving gates was to isolate the so-called secondary and neutral employers from the primary employer so that the union would not enmesh nonoffending employers in its dispute with the primary employer.

In the present case it clearly appears that from the outset the Union was attempting to enmesh secondaries in its dispute with the primary employer, Long.

Here a reserved gate at the old renovation site was set aside in June for the exclusive use of Long's employees. At no time did the Union attempt to picket at this reserved gate but maintained pickets at the intersection of Grand River and Highlander Way about 200 yards away from the entrance reserved for the primary employees. The sign initially carried by the pickets at this location named Long Construction but apparently within a short period of time that name faded out and the name of the employer with whom the Union had its dispute was no longer visible to the general public.

In addition to placing pickets at Highlander Way and Grand River Avenue the Union also picketed at the intersection of Highlander Way and M-59 approximately a mile north of the old renovation site. Clearly the Union was not picketing at this location to solely appeal to primary employees. Although some primary employees may have had to go by this picket to get to their work location 1 mile south of this picket line, it is obvious that the Union could have picketed much closer to the location where the primary employees were working.

Although Long had one employee at the new high school construction site on July 7, the Union was notified on July 9, that no primary employees would be on this site between the hours of 7 a.m. to 5 p.m. Monday through Friday, the Union continued to picket at the Highlander Way and M-59 intersection. Under any test that I can think of, this picketing was totally illegal and in no way attempted to limit its appeal to primary employees. It would appear to me that this picket line was placed at this location solely for the purpose of appealing to any secondary employees that might have to pass by this location to get to the entrance to the new Howell High School which had been used by the construction employees on that site for over 2-1/2 years. As a matter of fact, with pickets located at the strategic points, at the intersection of Grand River Avenue and Highlander Way, and M-59 and Highlander Way, all employees of secondary employers working on the new high school construction project would have to cross a picket line or go by a picket line at one point or the other. Under the circumstances it is my conclusion that the picketing at the intersection of Highlander Way and M-59 was totally illegal and done solely for the purpose of enmeshing secondary employees, and as it was successful Respondent has engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act, and I so find.

While the reserved gate at the old renovation site may not have been an ideal reserved gate, because of the one-way nature of the streets, it appears that the primary employees did enter and leave the old renovation site by this entrance. It also appears that suppliers to Long used this entrance in bringing materials to the site. There was some testimony that, in leaving the site, suppliers' trucks would go out other entrances that were not set aside for the use of the prinary employees. However, there is nothing in this record to indicate that the Union picketed those entrances. It continued to maintain its picket at the intersection of Grand River Avenue and Highlander Way where it would appeal to all employees who worked at the site.

It is my conclusion that the Union did not picket as close as possible to the location of the primary employees, but deliberately located its picket at a strategic point where it would appeal to the employees of all employers having business at the old renovation site, as well as those employees who had to pass by this picket location in order to get to the entrance to the new high school construction site.

When Barton Malow, the coordinator on the jobsite, and a secondary employer pleaded with Respondent's business agent, Griffin, to get his men back to work on the new high school project because it was not in any way connected with the old high school renovation job where Long was working, the business agent informed Barton Malow's project administrator, James Giachino, that his men, the Plumbers, did not want to work on the new Howell High School jobsite because they were upset that Long had been hired by the Howell Public Schools System to work on the old Howell High School. And even though the Union had no dispute with Barton Malow it was still one school district. Thus, the Union made it clear that a nonunion company was coming into its local jurisdiction and it did not want to see this happen. This statement clearly indicates that one of the purposes of the Union's picketing was to enmesh secondary employers. It is also clear that this happened, as construction for the most part was shut down on the new high school project until July 28 when it was enjoined by a United States District Court.

During that entire period, the union members working for the plumbing contractor on that job, Bosch Mechanical, refused to work and the Union was aware of this fact but made no attempt to get these employees to return to work.

Under all the circumstances, it is my conclusion that the picketing at both locations was clearly violative of Section 8(b)(4)(i) and (ii)(B) of the Act and was designed at least in part to appeal to the employees of secondary employers to not perform services for their employer in an attempt to compel their employer to cease doing business with other employers to force or require the Howell School System to cease doing business with Long, a primary employer. Thus, it is my conclusion the Union was clearly engaging in a secondary boycott against Long which is totally prohibited by Section 8(b)(4)(i) and (ii)(B) of the Act.

II. THE EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

The acts of Respondent set forth above, occurring in connection with the operations of Long Plumbing Co., and the other employers involved in this proceeding, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Upon the foregoing findings of fact, and conclusions, and upon the entire record, I hereby make the following:

CONCLUSIONS OF LAW

1. The Respondent, Local 388, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

2. Long Plumbing Co. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. Barton Malow Company, Sinacola Construction Company, Bosch Mechanical, and other employers engaged in performing services at the Howell High School construction sites are employers engaged in the construction industry.

4. At all times material herein the Respondent has had a labor dispute with Long Plumbing Co.

5. At no time material herein has Respondent had a labor dispute with any other employer on either of the jobsites involved.

6. By its picketing of the construction site of the renovation of the old Howell High School and the new construction of the new Howell High School, Respondent has engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

The above-described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) and Section 8(b)(4)(i) and (ii)(B) of the Act.

REMEDY

Having found that Plumbers Local 388 has engaged in and is engaging in unfair labor practices in violation of Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent is engaged in a secondary boycott against Long, and from the facts of this case is willing to go to any lengths, including secondary boycotts, to bring about a cessation of business between any employer and employers with whom it has a dispute, it is my conclusion that Respondent should be prohibited from this type of conduct. Additionally, this is not the first time that this union has engaged in a secondary boycott to bring about such a result. See *United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 388, AFL-CIO (Charles Featherly Construction Co.)*, 252 NLRB 452 (1980). Therefore, it is my conclusion that a broad order should issue against this Union enjoining it from engaging in secondary conduct against any employer where an object thereof is to force or require a cessation of business between any employer and Long, or any other person.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[6]

The Respondent, Local 388, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from picketing, or in any other manner inducing or encouraging any individual employed by any employer or person, to cease performing services or to engage in a strike, or threatening or coercing any employer or person, where an object thereof is to force or require a cessation of business between any employer or person and Long Plumbing Co., or any other person.

2. Take the following affirmative action:

(a) Post at its offices in Lansing, Michigan, and at other offices maintained by it, copies of the attached notice marked "Appendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[6] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT picket or in any other manner induce or encourage any individual employed by any employer or person to cease performing services or to engage in a strike, and WE WILL NOT threaten, coerce, or restrain any employer or person

where an object thereof is to force or require any employer or person to cease doing business with Long Plumbing Co., or any other person.

LOCAL 388, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO